







# LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

## BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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December 9, 1996

Captain Don Mauro
Los Angeles County Sheriff's Department
Homicide Bureau
4700 Ramona Boulevard
Monterey Park, CA 91754-2169

Re: S.I.D. File #: 100-8145/96-0379
L.A.S.D. File #: 095-12482-2971-055

Dear Captain Mauro:

The Special Investigations Division of the Los Angeles County District Attorney's Office has completed its review of the August 13, 1995 fatal shooting of Michael Aragon Nides. We have concluded that the shooting was a lawful act as explained below.

This review is based on the reports prepared by the Los Angeles County Sheriff's Department, Homicide Bureau, received by this office on October 1, 1996, and a review of photographic evidence taken at the scene of the shooting and at the autopsy of the deceased.[1] No independent investigation has been conducted by members of this office.

## FACTUAL ANALYSIS

Because there is no disagreement among the sworn and civilian witnesses as to the pertinent facts, this analysis is a composite of their statements.

On the night of August 13, 1995 at approximately 10:50 p.m., Sheriff's Deputies Edward Sudec and Mark Stephens were dispatched to the Charter Oak Park, which is located in Covina, in response to a 911 call regarding shooting occurring in the park. Upon their arrival they encountered Michael Aragon Nides, who was lying on his left side on the grass with his left arm propping up his head. He held a chrome

[1] We have examined 63 autopsy and 44 scene photographs. These 107 photographs are being returned to the Sheriff's Department, along with 2 video tapes and 5 "Detective Division Case Notebooks".

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210 West Temple Street
Los Angeles, CA 90012-3275

handgun in his right hand, which he held behind his buttocks area. Assisting units were called to the scene to assist Deputies Sudec and Mark Stephens. Mr. Nides was ordered to show his hands, which he failed to do. He was told several times to throw the gun down so that everyone could go home. His responses were unintelligible. He was illuminated by flashlights and car headlights. Some deputies opined, based on his actions and appearance, that he was under the influence of a drug.

As assisting deputies arrived, they positioned themselves behind cover and attempted to convince Mr. Nides to put down his weapon. Some of the deputies were approximately sixty feet from Mr. Nides. Deputy Sudec designated some of the assisting deputies as "shooters" should the need arise. One of the deputies was armed with a shotgun. During the stand-off, Sergeant Wright decided to deploy the "Arwen" rifle, a rifle which shoots rubber projectiles. However, during the time that he was preparing the rifle, Mr. Nides raised his gun and pointed it in the direction of the deputies. Some deputies believed that he had fired the weapon (however, no casings from his gun were found and it is presumed for purposes of this analysis that he did not shoot). At that point, Deputies Sudec (#[redacted], Darren Walker (#[redacted], Michael Burns (#[redacted], Wayne Stricklin (#[redacted] and Mark Brown (#[redacted] shot at Mr. Nides. He was apparently hit by some of the rounds since he fell backward. After a short time, Mr. Nides began to move and a second short volley was fired at Mr. Nides. The cease fire command was given after the second volley and after it appeared that Mr. Nides was no longer moving.

Shortly thereafter, Sergeant Wright, Deputy Stokes and Deputy Sudec approached Mr. Nides. Sergeant Wright kicked the gun away from Mr. Nides. Paramedics were called, but Mr. Nides had died from his wounds.

An autopsy was performed and the cause of death was determined to be multiple gunshot and shotgun wounds. Coroners toxicology tests revealed that Mr. Nides had alcohol, amphetamine, methamphetamine and benzoylecgonine in his system. Further, gunshot residue tests revealed the presence of gunshot residue on his hands. His gun was examined by a firearms expert; the gun was operable and had been fired since its last cleaning.

## LEGAL ANALYSIS

California law permits the use of deadly force in one's self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALJIC 5.30. 5.32.

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collin (1961) 189 Cal. App. 2d 575.

Actual danger is not necessary to justify the use of deadly force in self- defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal. App. 2d 577

If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in fear and honest conviction, his right of self-defense is the same whether such danger is real or merely apparent. People v. Jackson (1965) 233 Cal. App. 2d 639.

**CONCLUSION**

The shooting of Mr. Nides was reasonable and legally justifiable based upon the right to use deadly force to protect oneself or another. It was clearly reasonable to believe, at the time that Mr. Nides pointed the gun, that there was an imminent threat to life.

Therefore, based on the evidence reviewed this office declines prosecution and is closing its file.

Very truly yours,

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District Attorney

R. DAN MURPHY
Assistant District Attorney

By

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cc: Deputy Edward Sudec [redacted]
Deputy Darren Walker [redacted]
Deputy Michael Burns [redacted]
Deputy Wayne Stricklin [redacted]
Deputy Mark Brown [redacted]